

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA  
VENTURA DIVISION**

**TENTATIVE RULINGS**

EVENT DATE: 12/27/2018                      EVENT TIME: 08:20:00 AM                      DEPT.: 20  
JUDICIAL OFFICER: Matthew P. Guasco

CASE NUM: 56-2018-00509997-CU-PA-VTA  
CASE TITLE: GARCIA VS. MESSNER

CASE CATEGORY:    Civil - Unlimited                      CASE TYPE: PI/PD/WD - Auto

EVENT TYPE: Motion - Other (CLM) - for order to compel further responses to requests for admissions set one  
CAUSAL DOCUMENT/DATE FILED: Motion - Other, 11/30/2018

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Notice Regarding Courtroom 20 Law & Motion Procedures: The law and motion calendar in Courtroom 20 before Judge Matthew P. Guasco starts promptly at 8:30 a.m. Ex parte applications will be heard at the same time as matters on the law and motion calendar. Parties appearing by Court Call must check in with the Judicial Assistant by 8:20 a.m. No notice of intent to appear is required. Parties wishing to submit on the tentative decision must so notify the Court by e-mail at Courtroom20@ventura.courts.ca.gov or by fax to Judge Guasco's secretary, Art Alvara at (805) 477-5892. **Do** not call in lieu of sending an e-mail or fax. If a party submits on the tentative decision without appearing, but another party appears, the hearing will be conducted in the absence of the non-appearing party. Effective February 13, 2018, this case is assigned for all purposes to Judge Guasco.

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The following is the Court's tentative decision concerning the motion of plaintiffs, Carlos Garcia and Olga Duarte ("plaintiffs"), to compel further responses of defendant, Mark Messner ("defendant"), to Request for Admissions, Set One ("RFA"s):

The Court finds that the motion is timely pursuant to the parties' stipulation to extend time.

The Court finds that plaintiffs have fulfilled their obligations as moving parties to meet and confer in good faith with defendant prior to filing this motion. (Code of Civ. Proc., § 2033.290, subd. (b).).

The Court finds this motion is, in substance, a motion to compel further responses to RFAs within the meaning of Code of Civil Procedure section 2033.290, even though plaintiffs cite the wrong statutes in their notice of motion. The substance of the motion, including the separate statement and the arguments supporting the motion, is to compel further responses to specific RFAs. Accordingly, the Court rejects defendant's argument that the mislabeling of the motion is "fatal" to the motion. That would be a triumph of form over substance. "The law respects form less than substance." (Civ. Code, § 3528.)

The Court GRANTS the motion to compel defendant to provide further, code-compliant, verified responses to RFA numbers 1, 3, 4, and 6-12. Defendant's response of "Unable to Admit or Deny" to each of these RFAs is evasive and not code-compliant. Code of Civil Procedure section 2033.220, subdivision (a), requires each response to an RFA to "be as complete and straightforward as the information reasonably available to the responding party permits." Subdivision (c) of section 2033.22 provides as follows: "If a responding party gives lack of information or knowledge as a reason for a failure to admit all or part of a request for admission, that party shall state in the answer that a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily available is insufficient to enable that party to admit the matter." Clearly, defendant's response to the RFAs identified above does not comply with this express statutory standard.

Defendant is not permitted to evade complying with Code of Civil Procedure section 2033.220, subdivision (c), because it has not completed discovery, or wishes to avoid being pinned down to a definitive response at this juncture, or has a tactical desire to avoid a response which might aid plaintiff in making a summary judgment motion. Evasive responses

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to discovery nearly always serve some tactical purpose of the responding party. Yet, they are considered a form of discovery abuse prohibited by the Discovery Act. Section 2033.220, subdivision (c), prescribes an easy remedy for responding parties who have not completed discovery: make the required representations under oath concerning the inability to admit or deny the request.

Defendant shall provide further, verified, responses to RFA numbers 1, 3, 4, and 6-12, in conformity with Code of Civil Procedure 2033.220, subdivision (c), by **no later than January 17, 2019**.

The Court GRANTS plaintiff's motion for monetary sanctions as prevailing party in the total sum of \$1,600 pursuant to Code of Civil Procedure section 2033.290, subdivision (d). Such sanctions are mandatory unless the Court finds that defendant acted with "substantial justification" or the circumstances otherwise make imposition of sanctions unjust. The Court cannot make either finding on this record. The Court finds that the sum of \$1,600 is a reasonable and just sanction taking into consideration the nature and complexity of the motion, the experience and skill of counsel, and the results obtained. The Court ORDERS that defendant and his counsel of record, the law firm of McLaugherty & Associates, are jointly and severally liable to plaintiffs for said sanctions, and that the sum of \$1,600 shall be paid by and on behalf of defendant and his counsel of record to plaintiff, at the direction of plaintiff's counsel of record, by **no later** than January 31, 2019.

Counsel for plaintiff shall serve and file a notice of ruling and proposed order consistent with the above. A copy of this tentative decision (if adopted as the Court's ruling) may be attached to and incorporated by reference in any such notice or proposed order in lieu of copying same verbatim in the body of the document.